

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED
AUG 7 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)

Amendment of Section 73.202(b))
FM Broadcast Stations)

Benavides, Bruni, Rio Grande City)
and Victoria, Texas)

MM Docket 95-74
RM No. 8579

RM No. _____
RM No. _____

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

Sound Investments Unlimited, Inc., by its attorneys, hereby replies to the comments filed in the above-captioned proceeding on July 24, 1995.¹

Benavides Communications ("BC") has done everything within its power to make the hamlet of Bruni, Texas appear to be a community with sufficient significance to warrant a Class C2 radio station allotment. For example, although a school is indeed located in the vicinity of Bruni, it is merely a county school covering a large rural area. There is no "Bruni School System" as such. Indeed, the nature of the area is written in bold letters on BC's own Exhibit O: "RURAL." Fundamentally, therefore, the fact remains that Bruni does

¹ Sound Investments may, in addition, submit comments with respect to the counterproposals submitted on July 24, 1995 in this proceeding at the appropriate time. While Sound Investments sympathizes with the desire of Cosmopolitan Enterprises of Victoria, Inc. to preserve its ability to upgrade the facilities of station KTXN-FM, certain technical problems surface in connection with a review of that proposal. Sound Investments has not yet had time to analyze those problems in sufficient detail.

No. of Copies rec'd
List A B C D E

024

not qualify as a community within the meaning of the Commission's allotment policies.

Another impediment in the path of BC's plan is the enormous loss in authorized service which would occur as the result of the change in allotments. BC treats this aspect of its proposal lightly, urging that "the removal of a construction permit from a community does not present the same concerns with respect to a loss of service as removal of an operationg station...." BC Comments at 4. That argument loses its force, however, when one considers that the construction permit in question in this case is held by the petitioner.

For the Commission to discount, on that basis, the loss in service occasioned by this proposal (as compared with the service authorized by BC's permit for use of Channel 299C in Benavides) is to reward BC for its own failure to put KXTM on the air. Moreover, such a policy provides BC with a motivation for keeping KXTM off the air pending the outcome of the instant proceeding. Clearly, such a result is contrary to the public interest in expanded service. Therefore, the Commission should charge BC with the responsibility of providing service to the area it proposed to reach when it received a grant of its construction permit.

The Comments and Counterproposals of Sound Investments, filed on July 24, 1995, presented two options for resolution of this proceeding. In the second option, advanced only in case the Commission should for some reason decide that a rural crossroads of 375 people requires a Class C2 FM radio facility, Sound Investments

offered the idea of allotment of Channel 299C3 to Bruni. On further review, Sound Investments has concluded that even though the U.S.-Mexican Agreement on FM Broadcasting will admit a Class C2 allotment on that frequency at Bruni, it will not permit use of that channel as a Class C3 facility.

Because Sound Investments has concluded that Bruni does not have the size and attributes of a community, on reflection there is no need for it to advocate the concept of an alternate channel there. There appear to be a number of other FM channels available in the spectrum at Bruni. The Commission could, on its own motion, allot one of them to Bruni if it determines that Bruni warrants an allotment. However, the proposed allotment of Channel 299C~~2~~ there would not be in the public interest.

Moreover, since Sound Investments does not believe that Bruni could support an FM channel of its own, it hereby withdraws the second option expressed in its July 24 filing: that of allotment of Channel 299C3 to Bruni, coupled with allotment of Channel 254A to Benavides.

The public interest is better served by allotment of Channel 298C2 to Rio Grande City (the seat of Starr County, Texas), leaving Channel 299C2 in Benavides. As Sound Investments indicated in its earlier filing, it will apply for and construct facilities on Channel 298C2 if the Commission approves its request for substitution of Channel 298C2 for Channel 276A.

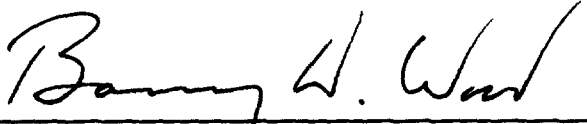
In view of the foregoing, Sound Investments renews its request that the Commission allot Channel 298C2 to Rio Grande City, Texas in

lieu of Channel 276A, while preserving the present allotment of Channel 299C2 for Benavides, Texas.

Respectfully submitted,

SOUND INVESTMENTS UNLIMITED, INC.

By:


Barry D. Wood
Mark A. Brinton

JONES, WALDO, HOLBROOK &
MCDONOUGH, P.C.
Suite 900
Washington, D.C. 20037
(202) 296-5950

Its Attorneys

August 7, 1995

CERTIFICATE OF SERVICE

I, Martha Lagerberg, hereby certify that I have, this 7th day of August, 1995, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "Reply Comments" to the following:

James A. Koerner, Esq.
Baraff, Koerner, Olender &
Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015-2003

William F. Moeller, Esq.
Fly and Moeller
1908 N. Laurent Street
Suite 520
P.O. Box 3547
Victoria, Texas 77903

Lee J. Peltzman, Esq.
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036

Miguel A. Villarreal, Jr.
505 Houston Street
P.O. Box 814
Laredo, Texas 78040


Martha Lagerberg